

§ 382.10

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to the request. The Department will, to the maximum extent feasible, respond to such requests within 180 days of receiving them. The Department will not take enforcement action with respect to your implementation of the policy or practice during the time prior to the Department's response.

(f) Notwithstanding any other provision of this section, the Department may commence enforcement action at any time after May 13, 2009 with respect to the policy or practice that is the subject of the request if it finds the request to be frivolous or dilatory.

(g) If you have not submitted a request for a waiver under this section with respect to a provision of this part, or such a request has been denied, you cannot raise the alleged existence of such a conflict as a defense to an enforcement action.

§ 382.10 How does a U.S. or foreign carrier obtain a determination that it is providing an equivalent alternative to passengers with disabilities?

(a) As a U.S. or foreign carrier, you may apply to the Department for a determination that you are providing an equivalent alternative to passengers with disabilities.

(b) You must send your application for an equivalent alternative determination to the following address: Assistant General Counsel for Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W96-322, Washington, DC 20590.

(c) Your application must be in English and include the following elements:

(1) A citation to the specific provision of this part concerning which you are proposing an equivalent alternative.

(2) A detailed description of the alternative policy, practice, or other accommodation you are proposing to use in place of compliance with the provision of this part that you cite, and an explanation of how it provides substantially equivalent accessibility to passengers with disabilities.

(d) The Department may grant the application, or grant the application subject to conditions, if it determines that the proposed facilitation does pro-

vide substantially equivalent accessibility to passengers with disabilities, compared to compliance with the provision of this part in question.

(e) If your application is granted, you will be deemed to be in compliance with this Part through implementing the equivalent alternative. If your application is denied, you must implement this part as written.

(f)(1) If you submit your application on or before September 10, 2008, the Department will respond to the request before May 13, 2009 to the maximum extent feasible. If the Department does not respond to the application by May 13, 2009, you may implement your policy or practice that is the subject of your application until the Department does respond.

(2) With respect to an application you make after September 10, 2008, you must comply with the provisions of this part without change from May 13, 2009 until the Department responds to your application.

Subpart B—Nondiscrimination and Access to Services and Information

§ 382.11 What is the general nondiscrimination requirement of this part?

(a) As a carrier, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) You must not require a qualified individual with a disability to accept special services (including, but not limited to, preboarding) that the individual does not request. However, you may require preboarding as a condition of receiving certain seating or in-cabin stowage accommodations, as specified in §§ 382.83(c), 382.85(b), and 382.123(a) of this part.

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, except where specifically permitted by this

Part. This is true even if there are separate or different services available for individuals with a disability, except when specifically permitted by another section of this Part; and

(4) You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act.

(b) As an indirect carrier, you must comply with §§382.17 through 382.157 of this part when providing facilities or services to passengers that would have otherwise been provided by a direct air carrier.

[Doc. No. DOT-OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 75 FR 44887, July 30, 2010]

§382.13 Do carriers have to modify policies, practices, and facilities to ensure nondiscrimination?

(a) As a carrier, you must modify your policies, practices, and facilities when needed to provide nondiscriminatory service to a particular individual with a disability, consistent with the standards of section 504 of the Rehabilitation Act, as amended.

(b) This requirement is part of your general nondiscrimination obligation, and is in addition to your duty to make the specific accommodations required by this part.

(c) However, you are not required to make modifications that would constitute an undue burden or would fundamentally alter your program.

§382.15 Do carriers have to make sure that contractors comply with the requirements of this Part?

(a) As a carrier, you must make sure that your contractors that provide services to the public (including airports where applicable) meet the requirements of this part that would apply to you if you provided the services yourself.

(b) As a carrier, you must include an assurance of compliance with this part in your contracts with any contractors that provide services to the public that are subject to the requirements of this part. Noncompliance with this assur-

ance is a material breach of the contract on the contractor's part.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this Part in activities performed on behalf of the carrier.

(2) The assurance must also commit the contractor to implementing directives issued by your CROs under §§382.151 through 382.153.

(c) As a U.S. carrier, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' compliance with this part and for enforcing the assurances in your contracts with them.

(e) It is not a defense against an enforcement action by the Department under this part that your noncompliance resulted from action or inaction by a contractor.

§382.17 May carriers limit the number of passengers with a disability on a flight?

As a carrier, you must not limit the number of passengers with a disability who travel on a flight. (See also §382.27(c)(6) of this part.)

[Doc. No. DOT-OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 74 FR 11471, Mar. 18, 2009]

§382.19 May carriers refuse to provide transportation on the basis of disability?

(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or